

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

NBC SUBSIDIARY (WMAQ-TV) LLC,)	
)	
Plaintiff,)	
)	
v.)	
)	2018CH15751
CHICAGO CITY COUNCIL COMMITTEE)	
ON FINANCE,)	
)	
Defendant.)	

COMPLAINT

NOW COMES Plaintiff, NBC SUBSIDIARY (WMAQ-TV) LLC (“NBC CHICAGO”), represented by the undersigned attorneys, LOEVY & LOEVY, and brings this Freedom of Information Act suit against CHICAGO CITY COUNCIL COMMITTEE ON FINANCE (“COF”) to force COF to produce records in response to Plaintiff’s FOIA request. At issue in this suit is COF’s failure to produce subpoenas and search warrants related to the recent federal raid of Alderman Ed Burke.

INTRODUCTION

1. Pursuant to the fundamental philosophy of the American constitutional form of government, it is the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of the Illinois Freedom of Information Act (“FOIA”). 5 ILCS 140/1.

2. All records of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt. 5 ILCS 140/1.2.

3. Restraints on access to information, to the extent permitted by FOIA, are limited exceptions to the principle that the people of this state have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of the people. 5 ILCS 140/1.

4. All public records of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt. 5 ILCS 140/3.

5. Under FOIA Section 11(h), "except as to causes the court considers to be of greater importance, proceedings arising under [FOIA] shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way."

PARTIES

6. Plaintiff NBC CHICAGO is an NBCUniversal Media, LLC owned and operated television station that has provided continuous local news coverage of the Chicago area for over sixty-five years. NBC Chicago broadcasts over thirty hours of locally produced newscasts each week. Plaintiff NBC CHICAGO is the FOIA requester in this case.

7. Defendant CHICAGO CITY COUNCIL COMMITTEE ON FINANCE is a public body under FOIA located in Cook County, Illinois.

DECEMBER 11 FOIA REQUEST

8. On December 11, 2018, NBC CHICAGO requested: 1) all subpoenas (issued on November 29, 2018) and search warrants (issued between November 26, 2018 and December 6, 2018) "to offices, departments or individuals of the City of Chicago and/or the City of Chicago

Committee on Finance by either the Federal Bureau of Investigation (FBI) or its agents, the office of the United States Attorney for the Northern District of Illinois or its agents, and the office of the Internal Revenue Service (IRS) or its agents," and 2) all search warrants or subpoenas "executed or served on Thursday, November 29, 2018 for the mobile telephone or telephones and/or any portable electronic devices registered to or used or in the possession of Alderman Ed Burke, the Committee on Finance or any employee of the City of Chicago." See Exhibit A.

9. On December 18, 2018, COF denied the request pursuant to 5 ILCS 140/7(1)(a), claiming that the information is specifically prohibited from disclosure by a federal court order. A true and correct copy of the denial letter is attached as Exhibit A.

10. On information and belief, based on Federal Rule of Criminal Procedure 6 and the decision in *Better Government Association v. Blagojevich*, there is no court order barring the release of the requested materials. Further, NBC CHICAGO has repeatedly asked COF and the City's Law Department for a copy of the alleged order and none has been provided.

COUNT I – DECEMBER 11 WILLFUL VIOLATION OF FOIA

11. The above paragraphs are incorporated by reference.
12. COF is a public body under FOIA.
13. The materials sought in NBC CHICAGO's FOIA request are public records of COF.
14. COF has willfully and intentionally violated FOIA by refusing to produce the requested materials.

WHEREFORE, NBC CHICAGO asks that the Court:

- i. in accordance with FOIA Section 11(f), afford this case precedence on the Court's docket except as to causes the Court considers to be of greater importance, assign

this case for hearing and trial at the earliest practicable date, and expedite this case in every way;

- ii. declare that COF has violated FOIA;
- iii. order COF to produce the requested records;
- iv. enjoin COF from withholding non-exempt public records under FOIA;
- v. order COF to pay civil penalties;
- vi. award Plaintiff reasonable attorney's fees and costs;
- vii. award such other relief the Court considers appropriate.

RESPECTFULLY SUBMITTED,

/s/ Matthew V. Topic

Attorneys for Plaintiff
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City of Chicago
Committee on Finance
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www.chgofinancecomm.chi.il.us

Alderman Edward M. Burke
Chairman

Telephone
312-744-3380

December 18, 2018

Mr. Don Moseley
NBC5 News
DePaul Center for Journalism
Integrity and Excellence
Dmose92480@aol.com

Re: FOIA request dated 12/11/18
For Documents related to the
Search of Alderman Ed Burke's
Offices on 11/29/18

Dear Mr. Moseley,

Thank you for writing to the Chicago City Council Committee on Finance with your request for information pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1, et seq.

On December 11, 2018, you requested the following records: "Copies of all subpoenas issued to offices, departments or individuals of the City of Chicago and/or the City of Chicago Committee on Finance by either the Federal Bureau of Investigation (FBI) or it's agents, the office of the United States Attorney for the Northern District of Illinois or it's agents, and the office of the Internal Revenue Service (IRS) or it's agents on November 29, 2018
Copies of all search warrants issued to offices, departments or individuals of the City of Chicago and/or the City of Chicago Committee on Finance by either the Federal Bureau of Investigation (FBI) or it's agents, the office of the United States Attorney for the Northern District of Illinois or it's agents, and the office of the Internal Revenue Service or it's agents for the time period of November 26, 2018 through December 6, 2018.

All search warrants executed or served on Thursday November 29, 2018 for the mobile telephone or telephones and/or any portable electronic devices registered to or used or in the possession of Alderman Ed Burke, the Committee on Finance or any employee of the City of Chicago.

All subpoenas for information, documents or devices executed or served on Thursday November 29, 2018 regarding the mobile telephone or telephones and/or any portable electronic devices registered to or used or in the possession of Alderman Ed Burke, the Committee on Finance or any employee of the City of Chicago."

Exhibit A

Mr. Moseley
December 18, 2018
Page Two

Your request is denied for the following reasons: pursuant to 5 ILCS 140/7 (1) (a) this information is specifically prohibited from disclosure by a federal court order.

You have a right to have the denial of your request reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General, 5 ILCS 140/9.5(a). You can file your Request for Review with the PAC by writing to:

Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, IL 62706
Fax: 217-782-1396
E-mail: publicaccess@atg.state.il.us

You also have the right to seek judicial review of your denial by filing a lawsuit in the State Circuit court, 5 ILCS 140/11.

If you choose to file a Request for Review with the PAC, you must do so within 60 calendar days of the date of this denial, 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this denial letter when filing a Request for Review with the PAC.

Very truly yours,

Michelle M. Murphy
Assistant Chief Administrative Officer
Committee on Finance

/mmm